

The Criminal LAWYER

Issue No 210

September/October 2012

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The Criminal Lawyer is published six times a year to keep the busy criminal law practitioner up-to-date with recent changes and developments in criminal law.

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- Published bi-monthly by Bloomsbury Professional Limited, Maxwellton House, 41-43 Boltro Road, Haywards Heath, West Sussex RH16 1BJ
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■ ISSN 2049-8047

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Case Comment: *R (S) v Secretary of State for Justice; R (KF) v Secretary of State for Justice*¹

Criminal law is concerned with establishing social order and protecting the community as a whole. It gives the population a set of rules for peaceful, safe and orderly living. People who break these laws can be prosecuted. A breach of the criminal law leading to a prosecution in the Magistrates Court or the Crown Court means that if found guilty a defendant could be fined or sent to prison, or both. Most prosecutions are brought by the police, for offences like murder and theft or misuse of drugs. However, the police are not the only ones who enforce the criminal law. The criminal law is therefore about punishing offenders and 'stopping them from doing it again'. It is not generally about dealing with individual rights. In a criminal case it is up to the prosecution to prove the offence 'beyond all reasonable doubt'. The court may award the victim compensation at the end of a case, if the defendant is found guilty. This may save the victim from bringing a civil claim.

Prison Statutory Instruments 44/2011 and 76/2011

These claims were brought by S, a male prisoner and KF, a female prisoner, at the Administrative Court of the Queen's Bench Division, and were heard by Mr Justice Sales, who dismissed both claims for a review of two Prison Statutory Instruments, namely 48/2011 and 76/2011. Note that PSI 44/2011 simply amends PSI 35/2009 regarding identity for bank account applications by prisoners and that PSI 76/2011 supersedes any conflicting instructions in the PSO 2300 and PSO 4460, especially the explicit reference in the latter to any sections of the Prisoners Earnings Act ('PEA')² 1996 not implemented. PSI 76/2011 replaces PSI 48/2011 which was cancelled as from 1 January 2012, the date when PSI 76/2011 (which supersedes all previous guidance) came into force, including its Annex B (giving guidance on exceptional circumstances).

What is the issue with PSI 76/2011?

We are reminded that it is not SI 76/2011 that enacted the financial imposition but it was in fact the 1996 Prisoners Earning